Filed 8/24/09 In re J.G. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.G., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. D.G., Defendant and Appellant.	G041407 (Super. Ct. No. DP016355) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Dennis Keough, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

* * *

D.G. (father) appeals from the juvenile court's order terminating his parental rights to his daughter, J.G., now age one, at the hearing held pursuant to Welfare and Institutions Code section 366.26[1] (.26 hearing). Father claims the court erred in not complying with the inquiry and notice provisions of the Indian Child Welfare Act (ICWA; see 25 U.S.C. § 1901 et seq.) For the reasons discussed below, we affirm.

I

FACTS AND PROCEDURAL BACKGROUND

In late 2007, L.C. (mother) gave birth to J.G. at a Santa Ana hospital. A nurse noted mother appeared to be under the influence of drugs. She was agitated and had scabs on both arms consistent with chronic methamphetamine use. Mother admitted using methamphetamines a day earlier, and she and J.G. both tested positive for methamphetamine at the time of the child's birth.

An Orange County Social Services Agency (SSA) social worker and an officer from the Santa Ana Police Department placed a hospital hold on J.G. SSA determined J.G. would likely be in danger of immediate or serious harm if released to mother based on her methamphetamine abuse. At the hospital, mother denied any American Indian heritage.

Background checks revealed mother and father's lengthy history of criminal activity and substance abuse. Neither successfully completed a substance abuse rehabilitation program. Mother's drug problems already had caused her to lose three children to the dependency system, two in 2002 and one in 2004.

The juvenile court ordered that J.G. be detained and moved to an emergency placement in December 2007, finding she would be in substantial danger if

[1] All further statutory references are to this code unless otherwise specified.

not removed from her parents' custody. Mother and father both denied having any Indian heritage at the detention hearing. Earlier, father had told a social worker he may have Apache ancestry through a paternal grandfather. Father retracted his statement after speaking with his paternal grandmother and a paternal aunt. Admitting he had been mistaken in claiming Indian ancestry, father denied any such heritage. He explained to the court he was confused because his father used to talk about his grandmother and had friends in the Apache tribe. When the court asked him if he had confirmed his dad's heritage from a recent conversation with him, father responded with a non sequitur, "Yeah, off and on." J.G.'s paternal grandmother informed the court she did not have any Indian heritage. She alerted the court her husband, J.G.'s paternal grandfather, also did not have any Indian ancestry. Labeling father's statements "equivocal," the juvenile court directed SSA to investigate possible Indian heritage on father's side of the family and to follow up with J.G.'s paternal grandfather to confirm his ancestry.

On December 14, 2007, Orange County sheriff's deputies found large quantities of methamphetamine in mother and father's hotel room during a parole search. As a result, father and mother suffered convictions for possession of methamphetamine for sale and, according to mother, were sentenced to three-year prison terms.

Based on the parents' prolonged incarceration and mother's prior reunification failures, the juvenile court adopted SSA's recommendation to deny reunification services. The paternal grandparents sought custody of J.G., but SSA recommended against placing J.G. with them because the grandfather had suffered a driving under the influence conviction and a police report suggested the paternal grandfather committed child abuse when he disciplined his son with a belt.

Instead, J.G. began living with foster parents on February 21, 2008. Fortunately, she did not appear to suffer long term effects of her mother's drug use during pregnancy, presenting no medical or behavioral issues. Her doctor confirmed she reached her developmental milestones. SSA's report for the .26 hearing noted J.G. had developed a significant relationship with her caretakers and was thriving in their home. The foster parents, in turn, had also bonded with the child and were eager to adopt her. SSA recommended J.G. remain in the caretakers' home and approved their plans to adopt the child.

SSA attempted to contact J.G.'s paternal grandfather to inquire about potential Indian ancestry, but could not reach him initially because he failed to answer his phone and his answering machine was too full to record a message. SSA sent notices to Apache tribes indicating J.G. may have Indian heritage. The notices contained identifying information for mother and father, but did not include any information regarding other relatives except for the name of J.G.'s paternal grandfather. All responses from the tribes denied tribal enrollment eligibility. During a hearing in April 2008, the court found SSA provided adequate notice to the relevant Indian tribes and that ICWA did not apply.

SSA reached J.G.'s paternal grandfather on two occasions in May 2008, and he denied Indian heritage both times. SSA contacted father again in May while he was in prison to confirm his lack of Indian heritage. After speaking to father, the prison counselor reported he denied any Indian ancestry.

During the .26 hearing on November 20, 2008, the court terminated mother and father's parental rights and placed J.G. for adoption. Mother expressed love for her

child but recognized adoption best served J.G.'s interests. Father filed a timely appeal challenging the court's order to terminate his parental rights.

II

DISCUSSION

Father argues the juvenile court and SSA did not conduct sufficient inquiry concerning his potential Indian heritage or provide adequate notice to potentially interested tribes under ICWA. We disagree.

Congress enacted ICWA "to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture . . . .'" (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195 (*Levi U.*).) "When a court 'knows or has reason to know that an Indian child is involved' in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child's tribe notice of the pending proceedings and its right to intervene. [Citations.] Alternatively, if there is insufficient reason to believe a child is an Indian child, notice need not be given. [Citations.]" (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538.) ICWA defines an "Indian child" as a child who is either (1) "a member of an Indian tribe" or (2) "eligible for membership in an Indian tribe and . . . the biological child of a member of an Indian tribe[.]" (25 U.S.C. § 1903(4).)

Father contends the juvenile court violated its inquiry duty under ICWA by failing to secure a completed JV-130, now ICWA-020, form. California Rules of Court, rule 5.664 provided the court must order parents to complete a JV-130 form.[2] The court

[2] Effective January 1, 2008, former California Rules of Court, rule 5.664 was repealed and replaced, in part, with current rule 5.481. (See Cal. Rules of Court, rule 5.481(a)(2) [requiring completion of form ICWA-020 at a parent's "first appearance . . . in any dependency case"].)

erred in not ensuring father's completion of the form, but the mistake was harmless. Father repeatedly denied having Indian heritage to the court and fails to indicate how he would have received a more favorable result if the form had been filled out.

Unlike *In re J.N.* (2006) 138 Cal.App.4th 450, 460-461, on which father relies, the juvenile court here inquired on the record whether mother or father had Indian ancestry. "Unless the juvenile court has some further basis on which to predicate the belief a child is an Indian under the Act, the court is not required to make further inquiry." (*Levi U.*, *supra*, 78 Cal.App.4th at p. 198; see *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413 [juvenile court's obligation "is only one of inquiry"].) Here, the juvenile court fulfilled its inquiry duty and, indeed, subsequent developments negated rather than suggested Indian ancestry, dispelling the need for any additional inquiry. Consequently, the juvenile court's failure to obtain the requisite form from father was harmless.

Father also claims SSA erred in failing initially to carry out the juvenile court's directive to contact the child's paternal grandfather. SSA attempted to but could not reach the grandfather before it sent notices to the Apache tribes. Even assuming the grandfather was easily reachable and SSA erred in not contacting him, the error was harmless because the grandfather later denied Indian ancestry. After sending out notices, SSA spoke to grandfather on the phone twice to confirm he did not have Indian ancestry. "[B]oth the federal regulations and the California Welfare & Institutions Code require more than a bare suggestion that a child might be an Indian child." (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520 (*Jeremiah G.*).) "In a juvenile dependency proceeding, a claim that a parent, and thus the child, 'may' have Native American heritage is insufficient to trigger ICWA notice requirements if the claim is not

accompanied by other information that would reasonably suggest the minor has Indian ancestry." (*Id.* at p. 1516.) This is particularly true when the father making a claim that the child may have Indian ancestry later retracts his claim. (*Ibid.*)

Aside from father's initial statement to a social worker concerning his father's putative Indian heritage, there is no other indication J.G. has any Indian ties. Notably, father himself retracted his claim of Indian ancestry multiple times. Father's mother and, most importantly, his father — through whom father initially claimed Indian ancestry — both denied Indian heritage. The record suggests that father's family members attended the .26 hearing; they did not, however, notify the court then or now to claim any Indian heritage, nor did they protest or seek to correct the juvenile court when it concluded ICWA did not apply. In sum, there exists no evidence J.G. has any Indian heritage aside from father's retracted claim. Because father retracted his claim of Indian heritage, and because there was no other basis for surmising J.G. might be an Indian child, the juvenile court could properly have proceeded without requiring ICWA notice. (*Jeremiah G.*, *supra*, 172 Cal.App.4th at p. 1516.) It follows that any potential defects father asserts in the notices SSA sent are of no moment.

III

DISPOSITION

The juvenile court's order terminating father's parental rights is affirmed.

ARONSON, J.

WE CONCUR:

SILLS, P. J.

O'LEARY, J.